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January 29, 2004

Via Electronic Filing  
Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A-325  
Washington, DC 20554

Re: *In the Matter of Section 272(b)(1)'s "Operate Independently" Requirement for  
Section 272 Affiliates WC Docket No. 03-228*

Dear Ms. Dortch:

In order to make an informed determination regarding the costs, if any, incurred by the BOCs as a result of the operation, installation, and maintenance ("OI&M") and joint ownership safeguards, the Commission needs the supporting documentation described below. In the absence of such information and the ability of the Commenters to see and comment on it, the Commission cannot and should not accept the BOCs cost claims. Accordingly, AT&T hereby requests that the BOCs produce the data identified herein. AT&T would be willing to review any proprietary material under the Protective Order already entered in this proceeding.

Verizon and SBC have each asserted in this proceeding that they have incurred, or will incur, hundreds of millions of dollars in complying with the section 272(b)(1) safeguards.<sup>1</sup> In the related *OI&M Forbearance proceedings*<sup>2</sup> each, in response to AT&T's demand that they

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<sup>1</sup> SBC Comments at 2 and note 5 and 6; Verizon Comments at 15.

<sup>2</sup> *Verizon Petition for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules*, CC Docket No. 96-149 ("Verizon OI&M Forbearance Proceeding"); *Petition of SBC for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) and 52.203(a)(3) of the Commission's Rules and Modification of Operating, Installation and Maintenance Conditions Contained In the*

substantiate the very same claims,<sup>3</sup> submitted one or more *ex partes* under protective order that did no more than identify categories of costs, provide an unsubstantiated total cost to each category and then apply a percentage to each category claimed to be the portion allocable to the section 272(b)(1) safeguards.<sup>4</sup> Both BOCs failed to produce *any* of the underlying documentation (including documentation from Texas and New York where they had experience with these safeguards) that might support those cost numbers or percentages, although AT&T offered to review that material under a Protective Order. BellSouth and Qwest, on the other hand, claimed that the cost of compliance is far lower. BellSouth, for example, claimed costs of only \$3.3 million a year.<sup>5</sup>

In light of the *ipse dixit* nature of the BOCs, claims, the incentives of the BOCs to exaggerate their costs in order to be relieved of their statutory obligations, and the wildly disparate savings claims between the BOCs (and the Commission has previously noted the significance of inter-BOC benchmarking to test the veracity of their claims),<sup>6</sup> the Commission cannot rely on the BOCs' cost claims unless the BOCs provide the Commission and the Commenters with the following data:

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*SBC/Ameritech Merger Order*, CC Docket No. 96-149, 98-141 (“*SBC OI&M Forbearance Proceeding*”)

<sup>3</sup> *Ex parte* Letter from David Lawson, on behalf of AT&T, to Marlene Dortch, FCC, CC Docket No. 96-149 (Nov. 15, 2002) at 1; *Ex parte* Letter from Aryeh Friedman, AT&T, to Marlene Dortch, FCC, CC Docket No. 96-149 (Jan. 3 2003); Comments of AT&T Corp, CC Docket Nos. 96-149, 98-141 (July 1, 2003).

<sup>4</sup> *Ex parte* Letter from Paul S. Fiera, on behalf of SBC, to Marlene Dortch, FCC, CC Docket No. 96-149, 98-141 (Oct. 21, 2003) (“SBC’s *ex parte* cost submission”); *Ex parte* Letter from Dee May, Verizon, to Marlene Dortch, FCC, CC Docket No. 96-149 (June 4, 2003); and *Ex parte* Letter from Dee May, Verizon, to Marlene Dortch, FCC, CC Docket No. 96-149 (June 24, 2003) (“Verizon’s June 24 *ex parte* cost submission”), although the information claimed by each BOC to be proprietary was elsewhere publicly disclosed by that BOC. *Compare*, SBC OI&M Petition, CC Docket No. 96-149, 98-141, Dietz Declaration ¶¶ 13 and 17, with SBC’s *ex parte* cost submission at 4 and 8; and Verizon’s June 24 *ex parte* cost submission with *Ex parte* Letter from Kathryn C. Brown, Verizon, to Commissioner Jonathan S. Adelstein, CC Docket No. 96-149 (October 31, 2003) at 2.

<sup>5</sup> *Ex Parte* Letter of Mary L. Henze, BellSouth, to Marlene Dortch, FCC, CC Docket No. 96-149 (Sept. 15, 2003) at 3; Qwest OI&M Forbearance Petition, CC Docket No. 96-149 (October 3, 2003) at 7.

<sup>6</sup> Memorandum Opinion And Order, *Applications Of Ameritech Corp., Transferor, And SBC Communications Inc., Transferee, For Consent To Transfer Control Of Corporations*, 14 FCC Rcd. 14712 (1999) (“*Ameritech-SBC Merger Order*”), ¶ 106 (“For regulators and competitors, comparative analyses of the practices and approaches of a variety of similarly situated incumbent LECs can render valuable information regarding network features, capabilities and costs.”); Memorandum Opinion And Order, *Application Of GTE Corp., Transferor, And Bell Atlantic Corp., Transferee, For Consent To Transfer Control*, 15 FCC Rcd. 14032 (2000) (“*Bell Atlantic – GTE Merger Order*”) ¶ 133.

1. All workpapers, data, analyses and documentation, including financial reports, actually used by the BOCs' in making their cost savings claims. The BOCs should state the assumptions used, such as labor rates, capital costs and depreciation lives, as well as the basis for their conclusion that each and every cost identified is actually "driven" by section 272.

2. The specific services that will be contracted for and the anticipated terms and conditions for those services, sufficiently specific and detailed that the Commission would know what the affiliate agreement would look like between the BOCs and their Section 272 Affiliate.

This must include at least the following:

- A specific list of the type(s) of service(s)
- Frequency of service(s)
- Employee(s) (employee class) providing the service(s), including number of employees in each class
- Pricing methodology (i.e. FDC, FMV, PCP, Tariff), including comparison of FDC/FMV for higher cost pricing (if applicable)
- Price to be charged, including backup data (FDC cost components including allocation of joint and common costs, Fair Market Value Studies, PCP records of transactions with non-affiliated entities). If prices are charged based on allocated rather than direct time reporting, provide the study used to allocate time.

3. Detailed explanation on how the costs will be allocated for joint service calls as between the affiliate and the BOC.

4. Identification of the specific expense and revenue account numbers that will be associated with any contracted services.

5. A draft written procurement procedures, practices and policies for services and goods to be provided by the BOC for the section 272 affiliate and goods or services to be provided by the section 272 affiliate for the BOC, including the documented details for the affiliate's bidding and selection process.

6. Detailed description of the specific performance metrics that would be included in any section 272(d) audit that would be used to identify cost misallocation and discrimination in the absence of the section 272(b)(1) safeguards.

Production of this data would not be onerous. To the contrary, AT&T seeks no more than what the BOCs likely will have to provide to the auditors in the section 272(d) audit<sup>7</sup> the BOCs claim will be an adequate substitute for these structural safeguards.<sup>8</sup>

AT&T would be willing to view this data under the Protective Order already entered in this proceeding to the extent any of the information provided is, in fact, confidential or proprietary.

Sincerely,

A handwritten signature in black ink, appearing to read "Aryeh Friedman", with a long horizontal flourish extending to the right.

Aryeh Friedman

cc: M. Carey  
S. Bergmann  
P. Megna  
C. Shewman  
J. Carlisle  
Service list attached

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<sup>7</sup> The data request is derived from the *General Standard Procedures for Biennial Audits Required Under Section 272 of the Communications Act of 1934, as amended*, appended to (or for the first Verizon and SBC reports separately provided by the Commission to AT&T) the Biennial Audit reports of: Verizon, submitted on June 12, 2003, CC Docket No. 96-150 (“Verizon’s Second Biennial Audit”), Attachment D and February 6, 2002, CC Docket No. 96-150, (“Verizon’s First Biennial Audit”) (unredacted versions); SBC, submitted on December 17, 2003 EB Docket No. 03-199, Appendix B (“SBC’s Second Biennial Audit”), and September 16, 2002 (unredacted version) (“SBC’s First Biennial Audit”); and BellSouth, submitted on November 10, 2003, Attachment, Objectives V, VI, and VII. *See also*, BellSouth Reply Comments at 15 (referring to OI&M services provided in the context of virtual collocation, for which there are performance metrics).

<sup>8</sup> Verizon Comments at 11-12; Qwest Comments at 7; BellSouth Comments at 11.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of January, 2004, I caused true and correct copies of the forgoing *Ex Parte* Letter of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: January 29, 2004

/s/ Karen Kotula  
\_\_\_\_\_  
Karen Kotula

## **SERVICE LIST**

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\* Filed electronically